

**BEFORE THE HEARING OFFICER FOR THE
IDAHO DEPARTMENT OF EDUCATION**

[REDACTED], a student, by and through)	H-07-10-05
the students parents,)	
)	
Student,)	FINDINGS OF FACT
vs.)	CONCLUSIONS OF
)	LAW AND DECISION
)	
Coeur d'Alene School District # 271,)	
)	
District.)	
_____)	

INTRODUCTION

A Hearing was held on March 21, 2008 at the Dodson and Raeon Offices, Conference Room to hear the Due Process Request of [REDACTED] in regards to their child, student [REDACTED].

[REDACTED] appeared pro se. The District was represented by attorney Charles Dodson. Witnesses called by the District included [REDACTED], School Psychologist, [REDACTED], Lake City High School Assistant Principal and [REDACTED], Coeur d'Alene Police Department assigned to Lake City High School as the School Resource Officer. The student did not attend the Hearing.

[REDACTED] testified on their own behalf. Various exhibits were made part of the Record by the Agreement of the parties and are included in the Transmittal of the Record.

**FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND DECISION**

The Due Process Hearing Request was originally made October 5, 2007. The time limits regarding the timeliness of the Hearing Officer's Decision were waived by the parties particularly so that a psychological evaluation could be conducted of student [REDACTED] by a doctor of the parents choosing.

At the Hearing the issue to be resolved was characterized as whether Student [REDACTED] should be permitted to participate in extra curricular activities available to other students in the Coeur d'Alene School District.

At the time of the Hearing, Student [REDACTED] was receiving services from the Coeur d'Alene School District while residing at [REDACTED].

FINDINGS OF FACT

Student [REDACTED] is enrolled as a 10th grade student at Lake City High School. Student [REDACTED] attended a portion of the 9th Grade during 2006-2007 School Year at Lake City High School.

Student [REDACTED] was evaluated in the 5th Grade to determine eligibility for Special Education. It was determined that student [REDACTED] was not eligible for Special Education Services at that time.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

During the 2006-2007 School Year student [REDACTED] was evaluated again and it was determined that student [REDACTED] was eligible for Special Education Services based upon an emotional disturbance.

An IEP was developed and became effective February 13, 2007. At that time the IEP identified that the student's present level of performance of post secondary school goals

indicated that student [REDACTED] had difficulty with behavior. Student [REDACTED] did not see a connection between actions and life.

Post school goals were identified and skill areas to be addressed by those goals included social behavior, anger management and functional academics. The IEP also provided secondary IEP goals, objectives and benchmarks, dealing with the skill area of behavior, identifying a present level of performance that student [REDACTED] lacked appropriate social skills for the public school environment and indicated that the objective of performance would be to learn to deal with demands placed upon the student, other students less than desirable behavior, how to deescalate volatile situations, confront in a reasonable manner, recognize and accept personal differences and express opinions without aggression.

Additionally, a skill area of anger was identified with a present level of performance that the student acts out inappropriately and violently when angry. The benchmark anticipated student [REDACTED] recognition of the triggers to anger, identify psychological precursors to rage, identify underlying emotions that drive anger, learn deescalating techniques and effective communication skills.

It was concluded that positive behavioral supports were considered but were not incorporated into the IEP goals and a behavioral intervention plan was not attached to the IEP. The IEP noted that before any plan was implemented student [REDACTED] behavior resulted in student [REDACTED] removal from the public school setting with school services provided through a contract with a PSR provider.

A least restrictive environment placement analysis was noted and written notice was provided indicating that the student would not be participating in the general education classroom and curriculum due to the severity of behavior.

By March 8, 2007 student [REDACTED] had accumulated an excess of ten days of disciplinary suspensions. A Manifestation Determination was conducted, concluding that the student's behavior was caused by the student's disability.

A risk assessment was conducted by School Psychologist, [REDACTED], who concluded that student [REDACTED] should be removed from the Public School setting and that student [REDACTED] should be educated in a more controlled and supportive setting.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

At the beginning of the 2007-2008 School Year student [REDACTED] returned to Lake City High School.

On September 7, 2007 Lake City High School Vice Principal [REDACTED], observed student [REDACTED] at an out of town football game. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Another Manifestation Determination was conducted on September 19, 2007. Again it was concluded that student [REDACTED] behavior was caused by or related to the student's emotional disturbance disability.

The IEP team then met on October 2, 2007 to consider the Manifestation Determination and alternate school placement.

Student [REDACTED] IEP was amended to place the student at [REDACTED], a residential facility and day school.

The IEP indicated that student [REDACTED] would receive services entirely off campus at [REDACTED] and referenced the earlier risk assessment performed by school psychologist, [REDACTED].

Written notice indicated that the team believed that the [REDACTED] structured program would best meet student [REDACTED] needs and that the severity of behavior at school warranted placement off the High School campus.

The parents filed the request for the due process hearing on October 5, 2007.

On October 8, 2007 the Board of Trustees considered the expulsion of student [REDACTED]. However, the School Board did not expel student [REDACTED] instead restricted student [REDACTED] from any school function or activity at any school, school campus, or school event or activity held off campus until further notice. The Board accepted the placement made for student [REDACTED] by the IEP team at [REDACTED].

The parents did not object to the placement of the student at [REDACTED].

Student [REDACTED] continued to reside and receive educational services at [REDACTED] until several weeks ago [REDACTED]
[REDACTED], where he remained at the time of the Hearing.

The parents did not challenge the placement of student [REDACTED] at [REDACTED] or the provision of Special Education Services at [REDACTED] but challenged the School Board's determination that student [REDACTED] could not attend or participate in any extra curricular activities.

The parents sought a psychological evaluation and a psychiatric consultation to respond to the District's invitation that if the parents could demonstrate that student [REDACTED] was no longer a risk to himself or others, the District would consider reinstating participation in extra curricular activities.

In December 2007 a Brief Assessment and Consultation Report for Children was prepared by Children's Mental Health Services for student [REDACTED]. Significantly the report recommended that student [REDACTED] participate in social activities that would assist in developing his coping skills. [REDACTED]

[REDACTED]

Student [REDACTED] reported that student [REDACTED] continued to need positive social outlets for his behavior which included participation in extra curricular activities, particularly recommending a return to student [REDACTED] participation in Lake City High School extra curricular activities.

A psychological examination was conducted for student [REDACTED] by [REDACTED]. In relevant part [REDACTED] observed that student [REDACTED] may frequently misperceive events, affirm mistaken conclusions, especially in interpersonal situations. As a result student [REDACTED] may not anticipate the consequences of actions and may not be able to maintain appropriate behavior in social situations. [REDACTED] also notes that student [REDACTED] has a low stress tolerance factor and opts to act impulsively. [REDACTED]

Student [REDACTED] also consulted [REDACTED], a psychiatrist in January of 2008. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

A follow up by Children's Mental Health Services on February 13, 2008 reported an improvement in mood and less anxiety.

The parents seek an order directing Coeur d'Alene School District No. 271 to permit student [REDACTED] participation in extra curricular activities.

CONCLUSIONS OF LAW

It is appropriate for the IEP team to consider the circumstances of student [REDACTED] participation in extra curricular and non academic activities and whether such activities assist student [REDACTED] in participating in educational opportunities to the extent appropriate with nondisabled students, and whether student [REDACTED] needs can be met in the least restrictive environment. 34 CFR 300.42.

On October 2nd, 2007 the IEP team appropriately considered the needs of student [REDACTED] in determining whether the [REDACTED] placement was appropriate with specific language indicating that services would be received "entirely off campus" at [REDACTED]. However, the IEP team did not consider whether participation in any extra curricular activities including off campus activities should be restricted.

It is clear that the IEP team concluded that an off campus placement was more likely to permit the student to develop the necessary and sufficient skills to address the student's behavior.

The District relies on the Board's statutory authority to restrict the activities of any person coming on to school grounds. The District's reliance on Idaho Code Section 33-512 (11) is problematic.¹

The Board of Trustees has the authority to prohibit any person who disrupts the educational process or is detrimental to the academic learning or disruption of the pupils from a physical presence on school grounds. However, such determination involving student [REDACTED] must be made considering the unique needs of a special education student to receive the full range of supplemental services and aids available to maximize the student's participation with non disabled students.

Additionally, the "Stay Put" provisions of 34 CFR 300.518 restricts the School District's ability to make any change in placement of the student during the pendency of the administrative process.

The IEP team's determination that placement at [REDACTED] impliedly prohibits student [REDACTED] participation in on campus activities. The reports of [REDACTED] and [REDACTED] support the parents claim that student [REDACTED] will benefit from participation in extra curricular activities. However, the IEP team's determination that student [REDACTED] should be placed at [REDACTED] by definition precludes participation in on campus extra curricular activities.

¹ Idaho Code Section 33-512 (11) provides that the Board of Trustees with the power "To prohibit entrance to each schoolhouse or school grounds, to prohibit loitering in schoolhouses or on school grounds and to provide for the removal from each schoolhouse or school grounds of any individual or individuals who disrupt the educational processes or whose presence is detrimental to the morals, health, safety, academic learning or discipline of the pupils. A person who disrupts the educational process or whose presence is detrimental to the morals, health, safety, academic learning or discipline of the pupils or who loiters in schoolhouses or on school grounds, is guilty of a misdemeanor."

The IEP team did not determine whether Student [REDACTED] could participate in any school sponsored activities which may occur off the Lake City High School campus. Since student [REDACTED] educational services includes participation in social activities and events, student [REDACTED] should be entitled to participate in non campus activities particularly based on student [REDACTED] placement off campus unless the IEP team meets and determines otherwise.

If all of the student's services are to be provided off campus, then student [REDACTED] should not be restricted from participating in any off campus activities even if sponsored by Lake City High School.

To the extent that the Board's order is inconsistent with the IEP, the Order of the Board is set aside unless the IEP team acts to consider the student's placement and the student's need for supplementary aids and services including extra curricular activities made available to non disabled students which might occur off the Lake City High School campus.

The statutory authority of Idaho Code Section 33-512(11) does not enlarge the School District's ability to restrict a student's reviewing special education services participation in student activities to non campus activities and events without consideration by the IEP team..

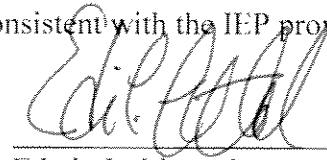
The authority of the School District to regulate its "school houses and school grounds" would appear to exist to limit off campus activities of special education services unless otherwise addressed by the IEP team.

DECISION

To the extent that the order of the School Board is inconsistent with the determination of the IEP team, the order of the Board prohibiting Student [REDACTED] participation in school sponsored

events off campus is set aside. The student may participate in such extra curricular activities occurring off the Lake City High School campus consistent with the IEP provisions.

DATED this 4 day of April 2008.



Edwin L. Litteneker
Hearing Officer